

ASSEMBLY BILL

No. 2284

Introduced by Assembly Member Dutra

February 24, 2000

An act to amend Sections 2941 and 2941.5 of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2284, as introduced, Dutra. Mortgages: reconveyances.

Existing law provides that when an obligation secured by a deed of trust has been satisfied, the beneficiary, or its assignee, is required to execute and deliver to the trustee the original note and deed of trust and request a reconveyance. The trustee is then required to execute and record the full reconveyance, except as provided, and deliver the note and deed of trust to the person making the request. Existing law further provides that if the trustee fails to execute and record the full reconveyance within 60 days of the satisfaction of the obligation, the beneficiary shall execute a document substituting itself or another as trustee and issue a full reconveyance. Existing law also provides that if neither the trustee or the beneficiary have executed and recorded a full reconveyance within 75 days of the satisfaction of the obligation, then a title insurance company may prepare and record a release of obligation, as specified. Existing law further provides that a violator of the above provisions shall be liable for all damages that a person sustains by reason of the violation plus the sum of \$300.

This bill would reduce the period within which a trustee must execute and record the reconveyance before the beneficiary is required to execute a document substituting itself or another as trustee from 60 days to 30 days. This bill also would reduce the period of time a title insurance company must wait before preparing and recording a release of obligation from 75 days to 50 days. This bill would also increase the sum which a violator must pay in addition to damages from \$300 to \$600.

Existing law provides that the trustee, beneficiary, or mortgagee may charge a reasonable fee for all services involved in the preparation, execution, and recordation of the full reconveyance.

This bill would require that a fee charged by the trustee, beneficiary, or mortgagee for services connected with the full reconveyance be held in escrow until the reconveyance has been executed and recorded.

Existing law makes a person who willfully violates the above provisions guilty of a misdemeanor punishable by a fine of up to \$400, up to 6 months imprisonment in the county jail, or both.

This bill would increase the maximum amount of that fine from \$400 to \$800.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2941 of the Civil Code is
2 amended to read:
3 2941. (a) Within 30 days after any mortgage has been
4 satisfied, the mortgagee or the assignee of the mortgagee
5 shall execute a certificate of the discharge thereof, as
6 provided in Section 2939, and shall record or cause to be
7 recorded, except as provided in subdivision (c), in the
8 office of the county recorder in which the mortgage is
9 recorded. The mortgagee shall then deliver, upon the
10 written request of the mortgagor or the mortgagor's
11 heirs, successors, or assignees, as the case may be, the

1 original note and mortgage to the person making the
2 request.

3 (b) (1) When the obligation secured by any deed of
4 trust has been satisfied, the beneficiary or the assignee of
5 the beneficiary shall execute and deliver to the trustee
6 the original note, deed of trust, request for a full
7 reconveyance, and other documents as may be necessary
8 to reconvey, or cause to be reconveyed, the deed of trust.

9 (A) The trustee shall execute the full reconveyance
10 and shall record or cause it to be recorded, except as
11 provided in subdivision (c), in the office of the county
12 recorder in which the deed of trust is recorded within 21
13 calendar days after receipt by the trustee of the original
14 note, deed of trust, request for a full reconveyance, the
15 fee that may be charged pursuant to subdivision (e),
16 recorder's fees, and other documents as may be necessary
17 to reconvey, or cause to be reconveyed, the deed of trust.

18 (B) The trustee shall deliver a copy of the
19 reconveyance to the beneficiary, its successor in interest,
20 or its servicing agent, if known.

21 (C) Following execution and recordation of the full
22 reconveyance, upon receipt of a written request by the
23 trustor or the trustor's heirs, successors, or assignees, the
24 trustee shall then deliver the original note and deed of
25 trust to the person making that request.

26 (2) If the trustee has failed to execute and record, or
27 cause to be recorded, the full reconveyance within ~~60~~ 30
28 calendar days of satisfaction of the obligation, the
29 beneficiary, upon receipt of a written request by the
30 trustor or trustor's heirs, successor in interest, agent, or
31 assignee, shall execute and acknowledge a document
32 pursuant to Section 2934a substituting itself or another as
33 trustee and issue a full reconveyance.

34 (3) If a full reconveyance has not been executed and
35 recorded pursuant to either paragraph (1) or paragraph
36 (2) within ~~75~~ 50 calendar days of satisfaction of the
37 obligation, then a title insurance company may prepare
38 and record a release of the obligation. However, at least
39 10 days prior to the issuance and recording of a full release
40 pursuant to this paragraph, the title insurance company

1 shall mail by first-class mail with postage prepaid, the
2 intention to release the obligation to the trustee, trustor,
3 and beneficiary of record, or their successor in interest of
4 record, at the last known address.

5 (A) The release shall set forth *all of the following*:

6 (i) The name of the beneficiary.

7 (ii) The name of the trustor.

8 (iii) The recording reference to the deed of trust.

9 (iv) A recital that the obligation secured by the deed
10 of trust has been paid in full.

11 (v) The date and amount of payment.

12 (B) The release issued pursuant to this subdivision
13 shall be entitled to recordation and, when recorded, shall
14 be deemed to be the equivalent of a reconveyance of a
15 deed of trust.

16 (4) Where an obligation secured by a deed of trust was
17 paid in full prior to July 1, 1989, and no reconveyance has
18 been issued and recorded by October 1, 1989, then a
19 release of obligation as provided for in paragraph (3) may
20 be issued.

21 (5) Paragraphs (2) and (3) do not excuse the
22 beneficiary or the trustee from compliance with
23 paragraph (1). Paragraph (3) does not excuse the
24 beneficiary from compliance with paragraph (2).

25 (6) In addition to any other remedy provided by law,
26 a title insurance company preparing or recording the
27 release of the obligation shall be liable to any party for
28 damages, including attorneys' fees, which any person
29 may sustain by reason of the issuance and recording of the
30 release, pursuant to paragraphs (3) and (4).

31 (c) The mortgagee or trustee shall not record or cause
32 the certificate of discharge or full reconveyance to be
33 recorded when any of the following circumstances exists:

34 (1) The mortgagee or trustee has received written
35 instructions to the contrary from the mortgagor or
36 trustor, or the owner of the land, as the case may be, or
37 from the owner of the obligation secured by the deed of
38 trust or his or her agent, or escrow.

39 (2) The certificate of discharge or full reconveyance is
40 to be delivered to the mortgagor or trustor, or the owner

1 of the land, as the case may be, through an escrow to
2 which the mortgagor, trustor, or owner is a party.

3 (3) When the personal delivery is not for the purpose
4 of causing recordation and when the certificate of
5 discharge or full reconveyance is to be personally
6 delivered with receipt acknowledged by the mortgagor
7 or trustor or owner of the land, as the case may be, or their
8 agent if authorized by mortgagor or trustor or owner of
9 the land.

10 (d) The violation of this section shall make the violator
11 liable to the person affected by the violation for all
12 damages which that person may sustain by reason of the
13 violation, and shall require that the violator forfeit to that
14 person the sum of ~~three~~ six hundred dollars ~~(\$300)~~
15 (\$600). However, a trustee acting in accordance with
16 subdivision (c) shall not be deemed a violator for
17 purposes of this subdivision.

18 (e) (1) The trustee, beneficiary, or mortgagee may
19 charge a reasonable fee to the trustor or mortgagor, or the
20 owner of the land, as the case may be, for all services
21 involved in the preparation, execution, and recordation
22 of the full reconveyance, including, but not limited to,
23 document preparation and forwarding services rendered
24 to effect the full reconveyance, and, in addition, may
25 collect official fees. This fee may be made payable no
26 earlier than the opening of a bona fide escrow or no more
27 than 60 days prior to the full satisfaction of the obligation
28 secured by the deed of trust or mortgage.

29 (2) If the fee charged pursuant to this subdivision does
30 not exceed sixty-five dollars (\$65), the fee is conclusively
31 presumed to be reasonable.

32 (3) *If a fee is charged pursuant to this subdivision, the*
33 *fee shall be held in escrow until the reconveyance has*
34 *been executed and recorded.*

35 (f) For purposes of this section, “original” may include
36 an optically imaged reproduction when the following
37 requirements are met:

38 (1) The trustee receiving the request for
39 reconveyance and executing the reconveyance as
40 provided in subdivision (b) is an affiliate or subsidiary of

1 the beneficiary or an affiliate or subsidiary of the assignee
2 of the beneficiary, respectively.

3 (2) The optical image storage media used to store the
4 document shall be nonerasable write once, read many
5 (WORM) optical image media that does not allow
6 changes to the stored document.

7 (3) The optical image reproduction shall be made
8 consistent with the minimum standards of quality
9 approved by either the National Institute of Standards
10 and Technology or the Association for Information and
11 Image Management.

12 (4) Written authentication identifying the optical
13 image reproduction as an unaltered copy of the note,
14 deed of trust, or mortgage shall be stamped or printed on
15 the optical image reproduction.

16 SEC. 2. Section 2941.5 of the Civil Code is amended
17 to read:

18 2941.5. Every person who willfully violates Section
19 2941 is guilty of a misdemeanor punishable by fine of not
20 less than fifty dollars (\$50) nor more than ~~four~~ *eight*
21 hundred dollars (~~\$400~~) (\$800), or by imprisonment in the
22 county jail for not to exceed six months, or by both ~~such~~
23 *that* fine and imprisonment.

24 For purposes of this section, “willfully” means simply a
25 purpose or willingness to commit the act, or make the
26 omission referred to. It does not require an intent to
27 violate the law, to injure another, or to acquire any
28 advantage.

